

**STATE OF INDIANA  
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF:</b>	)	
	)	
<b>C.H.S. CORPORATION</b>	)	<b>Permit No. RR46-05204</b>
<b>d/b/a Franklin Bar &amp; Grill</b>	)	
<b>Michigan City, Indiana</b>	)	
	)	
<b>La Port County</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

C.H.S. Corporation, d/b/a Franklin Bar & Grill (“Permittee”), located at 1607 Franklin Street, Michigan City, Indiana 46360, permit number RR46-05204, filed an application for a transfer of type 210 permit. The transfer of application was heard by the La Porte County Local Board (“Local Board”) on July 3, 2003 and granted the transfer of permit by a 3 to 1 vote. The Indiana Alcohol & Tobacco Commission (“ATC”) adopted the Local Board's recommendation on July 15, 2003. Paul A. Przybylinski (“Remonstrator”) filed a timely appeal and the matter was set for hearing before Mark C. Webb (“Hearing Judge”) on April 26, 2004 (“Hearing”). Notice of the Hearing was provided in accordance with ATC procedures. Joseph Quill represented Permittee during the Hearing. Remonstrator was represented by John M. Espar. Witnesses were sworn, evidence was presented, the parties presented final arguments and the matter was taken under advisement. Hearing Judge U-Jung Choe, having reviewed the tape-recorded transcript of the hearing, the evidence submitted to the ATC during the hearing, and the contents of the entire file, now tenders her Proposed Findings of Fact and Conclusions of Law for recommendation to the members of the ATC.

## **II. EVIDENCE AT THE HEARING**

### **A. Exhibits**

Remonstrator offered the following exhibits that were admitted over objections by the Permittee:

1. Exhibit #1 - A diagram of the Franklin Street Bar & Grill vicinity depicting surrounding streets and other businesses.
2. Exhibit #2 - A printout of the Michigan City Police Department calls for services for 1407 Michigan Avenue from 2001 to 2002.
3. Exhibit #3 - A printout of the Michigan City Police Department calls for services for 1407 Michigan Avenue from 2002 to 2003.
4. Exhibit #4 - ATC notices of violations - two from 1987 and one from 1994. A warning not to promote professional gambling from the ATC dated June 2003.
5. Exhibit #5 - A printout of the Michigan City Police Department calls for services for the Franklin Street Bar & Grill, 1607 Franklin Street from April 2002 to April 2004.

Permittee offered the following exhibits that were admitted over objections by the Remonstrator:

1. Exhibit A - A canvass sheet covering the Franklin Street block with eight local business members' signatures all stating "no" to a question "has Councilman Przybylinski ever approached you regarding your opinion of Franklin Bar & Grill? If so, please state and sign. If yes, please state what he mentioned."
2. Exhibit B - A petition in support of the Permittee signed by the Franklin Street business owners.
3. Exhibit C - A petition in support of the Permittee signed by the local residents.
4. Exhibit D - A letter in support of the Permittee by an employee of the Open Door Health Clinic, located right next to the permit premise.
5. Exhibit E - A letter in support of the Permittee by Trisha Sosinski, an owner of a beauty shop located directly across from the permit premise.

6. Exhibit EE - A letter in support of the Permittee from the owner of the Magro Shoe Store located right across the street from the permit premise.
7. Exhibit F - A letter in support of the Permittee by James E. Drader, Vice President of the City Savings Bank, 2000 Franklin Street, Michigan City, Indiana.
8. Exhibit G - Franklin Bar & Grill Menu.
9. Exhibit H - Photograph of the permit premise depicting exterior improvements.
10. Exhibit I - Photographs of the Franklin Street and businesses adjacent to permit premise.

The Hearing Judge took administrative notice of the Commission file concerning Permittee's application including the transcript of the proceedings before the Local Board and the other documents contained within the file.

### **B. Testimony**

The following witnesses were sworn and provided testimony at the Hearing:

1. Paul A. Przybylinski, a member of the Michigan City Common Council representing the Second Ward and a resident of 1716 Washington Street who testified in opposition to the transfer of said permit.
2. Paula Oshinski, one of the owners of the permit premise who testified in support of the transfer of the said permit.
3. Tom Oshinski, one of the owners of the permit premise who testified in support of the transfer of the said permit.

### **III. FINDINGS OF FACT**

1. The Permittee, C.H.S. Corp., d/b/a Franklin Bar and Grill, located at 1607 Franklin Street, Michigan City, Indiana 46360, filed an application for a transfer of type 210 permit, #RR46-05204. (ATC File).

2. Prior to the transfer to the above location, the Permittee operated a business known as The Getaway Lounge, 1407 Michigan Boulevard, Michigan City, Indiana. (ATC File; LB Hearing; ATC Hearing)
3. The permit premise is owned 25% by Tom Oshinski, 25% by Paula Oshinski, and 50% by Dan Semla. (ATC File).
4. On or about April 11, 2003, Permittee filed with the Commission its petition for transfer of location that was subsequently referred to the La Porte County Local Board. (ATC File).
5. On July 3, 2003, the Local Board approved the Permittee's application for the said permit and found by substantial evidence that it should be entitled to this permit. (ATC File; LB Hearing).
6. On July 15, 2003, the ATC adopted the recommendation of the Local Board. (ATC File).
7. No substantive facts or evidence were presented at the Local Board that the issuance of the permit would negatively impact the community or surrounding businesses. (LB Hearing).
8. The testimony presented at the Local Board does not substantiate any factual or legal objection to Permittee's application. (LB Hearing).
9. The granting of the permit by the Local Board is supported by substantial evidence. (LB Hearing).
10. Local residents have expressed a desire to purchase alcoholic beverages locally and at Permittee. (LB Hearing; ATC Hearing).

11. Permittee has demonstrated that there is a need and desire for the services to be provided under the permit. (LB Hearing; ATC Hearing).

12. Remonstrator has demonstrated that there is no desire for the services to be provided under the permit. (LB Hearing; ATC Hearing).

13. Permittee is not disqualified from holding a ATC permit. (ATC File; LB Hearing; ATC Hearing).

14. Permittee is not in a residential area or within two hundred feet of a church or school. (LB Hearing; ATC Hearing).

#### **IV. CONCLUSIONS OF LAW**

1. The ATC has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and § 7.1-2-3-9.

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.

3. The ATC is authorized to act upon proper applications. *Id.*

4. The Local Board's approval of the Application on July 3, 2003 was in accordance with Indiana Code and the rules of the ATC, and sufficient to give the ATC authority to act upon the application. *Indiana Alcoholic Beverage Commission v. Harmon*, 379 N.E.2d 140, 146 (Ind. 1978).

5. The ATC's approval of the Permit on July 15, 2003 was based upon the recommendation of the Local Board, and was a valid exercise of the ATC's absolute discretion. *Id.*

6. Permittee is qualified to hold the permit under Ind. Code § 7.1-3-4-2(a).

7. Permittee is of good moral character. 905 IAC § 1-27-1.

8. Upon application for transfer of location of an existing permit, the ATC shall consider the desirability of the permit in regard to the potential location of said permit. 905 IAC § 1-27-4.

9. In determining whether a permit should be issued in a particular matter, the ATC is charged to consider the following factors:

- (a) need for the permit;
- (b) desire for the permit;
- (c) impact of such services on other business in the neighborhood or community; and/or
- (d) impact of such services on the neighborhood or community.

*Id.*

10. A determination of whether there exists a need for the permit, a desire for the services, and to what degree of impact of such services on the neighborhood and businesses turn on the facts of each case. *Id.*

11. Where permittee shows that its customers would be willing to purchase alcoholic beverages if they were available for sale, such evidence constitutes a desire to receive such services at that location. 905 IAC § 1-27-4(b).

12. Permittee's collective petitions signed by neighborhood residents and businesses show a desire for services at that location. *Id.*

13. Remonstrator's testimony is an evidence of no need or desire for services at that location. *Id.*

14. The proposed permit location is appropriate for the use, and does not violate the provisions of Indiana Code § 7.1-3-21-11.

15. Permittee has submitted substantial evidence that it is qualified to hold a Type 210 permit and that there is substantial support by the general population in the area who are in favor of the issuance of the Permit. Substantial evidence is such evidence which a reasonable mind might accept as adequate to support a conclusion. *Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. Ct. App. 2002).

16. The ATC may reverse the LB's decision in granting the renewal of said permit if it finds that the LB's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

17. The LB's action in granting the transfer application of the Permittee's permit was not (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. *Id.*

18. Any finding of fact which states a conclusion of law is hereby deemed to be a conclusion of law and any conclusion of law which states a finding of fact is hereby deemed to be a finding of fact.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the decision of the Local Board to recommend the transfer of a permit to the Permittee,

C.H.S. Corporation, d/b/a Franklin Bar and Grill, permit number RR46-05204, is hereby upheld and the transfer of type 210 permit to the Permittee is hereby GRANTED.

DATE: \_\_\_\_\_

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U-JUNG CHOE, HEARING JUDGE